

APPENDIX F TO DIR CONTRACT NO. DIR-SDD-1656

SUPPORT EXHIBIT Software Maintenance

These Terms and Conditions for Product Maintenance (the "Support Exhibit") set forth the basic provisions under which EMC makes available Product Maintenance to Customer under DIR Contract No. DIR-SDD-1656. The specific Product programs and other details of coverage shall be identified on the Product Notice.

1.0 DEFINITIONS

- 1.1 "Maintenance" shall mean maintenance services identified as such in this Exhibit.
- 1.2 "Designated EMC System" shall mean the Equipment that consists of a storage device, identified by serial number on its cabinetry or packing slip, on which the Core Software and/or Enhanced Feature Software operates.
- 1.3 "EMC Service Area" shall mean a location within a one hundred (100) mile radius of an EMC service location.
- 1.4 "Host CPU" shall mean a central processing unit designated by Customer to operate with the Designated EMC System.

2.0 SOFTWARE MAINTENANCE

- 2.1 General –Maintenance shall be provided by EMC for the Software for which Customer pays the applicable Maintenance fee. Time and Materials Service shall be made available by EMC in accordance with DIR Contract No. DIR-SDD-1656 and shall apply to any Maintenance type services provided by EMC to Customer that are not covered by Maintenance.
- 2.2 Software – Software Maintenance consists of the services and content applicable thereto as specified on the applicable Product Notice, which may generally include (i) providing English-language help line service (via telephone or other electronic media), Software Releases and documentation updates, as they become available all in accordance with the Product Notice and options selected by Customer, if applicable; and (ii) replacing Software media provided by EMC if the media becomes destroyed or unusable through no fault or negligence of Customer.. EMC reserves the right to change the scope of Maintenance on sixty (60) days' prior written notice to Customer of such change.
- 2.3 Response Times - EMC shall use reasonable efforts to provide a telephone response, when applicable to the Software and selected service level, to requests for Maintenance within the time period stated in the Product Notice after receipt of such request. When EMC determines that the request requires an on-site response, EMC shall use reasonable efforts to arrive at the Installation Site (if located within an EMC Service Area) within the time period stated in the Product Notice for the service level selected by

Customer after EMC makes such determination.

- 2.4 Exclusions and Limitations – Maintenance does not include services required or efforts to remedy, repair or replace Products as a result of (i) accident or neglect or causes not attributable to normal wear and tear; (ii) problems relating to or residing in other hardware, software or services with which the Products are used; (iii) installation of the Products not in accordance with EMC's instructions or their specifications; (iv) use of the Products in an environment, in a manner or for a purpose for which they were not designed; and (v) installation, modification, or alteration of the Software by anyone other than EMC or its authorized representatives. EMC will have no Maintenance obligations whatsoever with respect to Software which is installed on hardware other than Equipment, Host CPU, network, or device for which it was licensed, or Software on which the original identification marks have been removed or altered. Maintenance does not apply to any Software Release other than the current and immediately prior Software Release, but EMC may, in its discretion, make available support therefor as a Time and Materials Service.
- 2.5 Re-Instatement of Continuous Coverage – If Maintenance has lapsed or been discontinued, Customer may request re-instatement thereof by retaining EMC under a Time and Materials Service engagement to perform an inspection and determine what steps, if any, are needed to restore the applicable Software to proper operating condition. Once so restored, such Software shall be certified by EMC and qualify for re-instatement of Continuous Coverage upon payment to EMC of (i) the charge for the above described Time and Materials Service and the EMC charges, if any, for the restoration; (ii) the amount EMC would have normally charged had Maintenance been in effect during the period of the lapse or discontinuation; and (iii) the charge for the next twelve (12) months of the newly commenced Maintenance.
- 2.6 Customer Responsibilities - Customer shall (i) notify EMC when Software fails; (ii) allow EMC access to any Software to perform Product Maintenance or implement the terms of this Exhibit; (iii) furnish necessary facilities (suitable work space, computers, power, light, phone, software and equipment

reasonably required by EMC); and (iv) promptly notify EMC of any changes to, or movement of, the configuration by anyone other than EMC. EMC reserves the right to inspect and evaluate the changes in configuration or location at EMC's then current Time and Materials Service terms, conditions and rates, as allowable by DIR Contract No. DIR-SDD-1656. Additional Maintenance charges, as allowable by DIR Contract No. DIR-SDD-1656, related to any such changes in configuration or location, shall apply from the date the change took place. Customer shall fulfill the responsibilities described in this sub-section promptly at no charge to EMC.

- 2.7 Support Contacts - Customer shall designate in writing a reasonable number of authorized contacts, as determined by Customer and EMC, or as specified in the Product Notice, who shall initially report problems and receive support from EMC. Each Customer representative shall be familiar with Customer's requirements and shall have the expertise and capabilities necessary to permit EMC to complete its obligations. A change to the authorized Support Contacts by Customer must be submitted in writing to EMC by a duly authorized representative of Customer.

3.0 ADDITIONAL TERMS

3.1 Software Releases - All or any portion of any Software Release provided hereunder shall be treated as Software. Upon use of a Software Release on the applicable Designated EMC System, (or multiple items of Equipment, devices, network(s) and/or related central processing unit(s) ("CPU") if Customer is so licensed) Customer shall remove and make no further use of all prior versions and Software Releases of the Software, and, to the extent allowable by the Texas Public Information Act, protect such prior versions and Software Releases from disclosure or use by any third party by use of the same degree of care as used by Customer to protect its own information of a similar nature and importance. Customer is authorized to retain a copy of each prior Software Release properly obtained by Customer for Customer's archive purposes and use such as a temporary back-up if the current Software Release becomes inoperable.

- 3.2 3.3 Use and Non-transferability of Software - Customer shall use Software Releases for Core Software only on the Designated EMC System with which the Core Software was shipped. Except as stated in sub-section 3.7 below, Customer shall use Software Releases for Application Software and Enhanced Feature Software, up to the permitted capacity and/or number of units (if applicable and for which Customer is so licensed) and for Enhanced Feature Software only on or in connection with the Designated EMC System (or multiple items of Equipment, devices, network(s) and/or related CPUs

if Customer is so licensed) with which the Enhanced Feature Software was shipped; or the Designated EMC System, or other items of Equipment, devices, network(s), related CPUs, or environment for which such Software was specifically ordered and/or licensed by Customer. To the extent allowable by the Texas Public Information Act, Customer shall not, without EMC's prior written consent, (i) copy, provide, disclose or otherwise make available any Software Releases in any form to anyone other than Customer's employees, consultants or independent contractors, who shall use such Software Releases solely for Customer's internal business purposes in a manner consistent with this Exhibit. Customer has no right to sell, assign, sub-license or otherwise transfer any Software Releases to any third party in any way; and (ii) shall provide EMC with reasonable notice and opportunity to retrieve and/or disable such Software Releases prior to any sale, assignment, sub-licensing or other transfer of the related Equipment. To the extent that EMC resources reasonably permit, EMC shall make available to the Secondary Purchaser (a) Equipment installation and re-certification services pursuant to EMC Time and Materials Service; and (b) Maintenance for Equipment meeting the certification criteria. EMC shall make available to the Secondary Purchaser a license to use Software pursuant to EMC's then current licensing terms, conditions and pricing. To the extent the Core Software is subsequently licensed by EMC to a Secondary Purchaser, Customer's license to use such Core Software shall be deemed terminated.

- 3.4 Change of Location or System - Customer may change the location of a Designated EMC System or Host CPU upon which Application Software or Enhanced Feature Software is used, to a replacement location, only after written notice to EMC. If the replacement location is in a different country, then such move is subject to EMC's prior written approval. Customer may move the Application Software or Enhanced Feature Software to a different Designated EMC System or Host CPU with a different model number than the originally Designated EMC System or Host CPU, only after written notice to EMC, provided Customer shall pay, if applicable, an upgrade fee. Beginning with the next Maintenance billing cycle, Customer shall pay applicable fees based upon the replacement model number.

4.0 PAYMENT AND PRICING TERMS

- 4.1 Payment and Pricing Terms are outlined in Section 7.C. of Appendix A and Appendix C, Pricing Index to DIR Contract No. DIR-SDD-1656.
- 4.2 Remote Support Capability - As part of Maintenance, EMC makes various remote support capabilities available for certain Products in accordance with its then current policies and procedures. One aspect of

this remote support capability enables certain Designated EMC Systems to directly contact the appropriate EMC support center if the self-monitoring programming detects an abnormality that may affect performance. Upon such contact, EMC has the ability to call back to the Designated EMC System to gather additional diagnostic data, conduct further tests and remotely perform certain repairs and/or adjustments (collectively called the "Connect Home Feature"). EMC shall use stringent security measures, such as authentication and encryption, when communicating with the service module to protect against unauthorized access. EMC's standard Maintenance pricing is based on the use of the Connect Home Feature for early detection and remediation.

- 4.3 Disablement of Remote Support and Surcharge - Customer acknowledges that it has been informed by EMC that disabling or interfering in the operation of all or any portion of the Connect Home Feature increases the cost to EMC of providing Maintenance, downgrades EMC's ability to provide early detection and prompt resolution of problems, and shall serve as the basis for EMC to increase the charge to Customer for Maintenance. If Customer sends EMC written notice requesting disablement of all or any portion of the Connect Home Feature for a specific Product, EMC shall do so and notify Customer of the date on which such disablement becomes effective. Commencing on the date on which disablement of all or any portion of the Connect Home Feature becomes effective, and continuing for the period thereafter in which EMC provides Product Maintenance for the affected Product(s), EMC shall invoice Customer and Customer shall pay EMC in accordance with the payment terms of Sections 7.B. and 7.C. of Appendix A to DIR Contract No. DIR-SDD-1656.

- 4.4 Payments - Customer shall pay EMC in accordance with the payment terms outlined in Section 7.C. of Appendix A to DIR Contract No. DIR-SDD-1656.

5.0 WARRANTY

- 5.1 Product Maintenance - EMC warrants that it shall perform Maintenance in a workmanlike manner in accordance with generally accepted industry standards. Customer must notify EMC of any failure to so perform within ten (10) days after the date on which such failure first occurs. Customer's exclusive remedy and EMC's entire liability under the foregoing warranty shall be for EMC to, at its option, (i) use reasonable efforts to re-perform the deficient services within a reasonable time, or replace any replacement parts which become defective within sixty (60) days after installation thereof; and (ii) if, after reasonable efforts EMC is not able correct such deficiencies, refund the portion of any pre-paid

Maintenance fee that corresponds to such failure to perform.

- 5.2 Disclaimer of Warranties - **EXCEPT AS EXPRESSLY STATED IN THIS WARRANTY SECTION, EMC (INCLUDING ITS SUPPLIERS) PROVIDES CONTINUOUS COVERAGE PRODUCT MAINTENANCE "AS IS" AND MAKES NO OTHER EXPRESS WARRANTIES, WRITTEN OR ORAL, AND ALL OTHER WARRANTIES ARE SPECIFICALLY EXCLUDED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, AND ANY WARRANTY ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, OR USAGE OF TRADE.**

6.0 TERM AND TERMINATION

- 6.1 Term - Maintenance for a Product(s) shall commence when mutually agreed between the parties and shall continue until terminated in accordance with this Exhibit.
- 6.2 Termination for Convenience - Either party may terminate Maintenance for a Product(s) for its convenience upon sixty (60) days' prior written notice. After termination for convenience, EMC shall grant Customer a pro-rated credit, reflecting the unused portion of any pre-paid Maintenance amounts, as described in sub-section 6.4 below.
- 6.3 Termination for Breach - Either party may terminate Maintenance for a Product(s) due to a failure of the other party to comply with the terms of this Exhibit, provided that the terminating party has given thirty (30) days' written notice specifying the failure and the other party has not remedied such failure within such time. In the event Customer terminates Maintenance for any Product(s) affected by such a failure by EMC, EMC shall grant Customer a pro-rated credit for any pre-paid amounts, as described in sub-section 6.4 below. If EMC terminates Maintenance for any Product(s) affected by such a failure by Customer, such termination shall be without further liability for EMC and without any obligation to refund any fees already paid therefor.
- 6.4 Credit - The pro-rated credit described in sub-sections 6.2 and 6.3 above shall be made available only as a credit against purchases of Products, Maintenance or Time and Materials Service. The amount of such credit shall be reduced to account for the recapture of unearned discounts (discounts previously granted, if any, which are based on a Customer obligation that will no longer be fulfilled due to termination).